62D CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { REPORT No. 611.

JUDICIAL PROCEDURE OF UNITED STATES COURTS.

APRIL 26, 1912.—Referred to the House Calendar and ordered to be printed.

Mr. DAVIS of West Virginia, from the Committee on the Judiciary, submitted the following

REPORT.

[To accompany H. R. 16461.]

The Committee on the Judiciary, having had under consideration the bill (H. R. 16461) to regulate the judicial procedure of the courts of the United States, report the same back with certain amendments and with the recommendation that the bill as amended do pass.

The several amendments as reported are as follows:

1. On page 1, line 8, insert after the word "judgment" the words "decree or order," so that the line as amended will read "that no judgment, decree, or order shall be set aside, etc."

2. On page 1, line 9, after the word "court," strike out the word "in" and insert in lieu thereof the word "of," so that the bill as amended will read "courts of the United States" instead of "courts in the United States."

3. On pages 1 and 2 of the bill, strike out all after the word "criminal," on page 1, line 10, down to and including the word "parties," on page 2, line 2, and insert in lieu thereof the words "on account of any error which does not injuriously affect the substantial rights of the party complaining."

4. On page 2, line 3, after the word "may," insert the words "in his discretion."

The amendments suggested are designed to perfect the form of the bill without in any essential particular affecting its purpose.

The bill, as originally drawn, was prepared by a committee of the American Bar Association, by which also it has been under discussion for five years. In an amended form it passed the House of Representatives unanimously on the 6th day of February, 1911, and in the message of the President sent to Congress on December 21, 1911, we find the following recommendation:

> The American Bar Association has recommended to Congress several bills expediting procedure, one of which has already passed the House unanimously, February 6, 1911. This directs that no judgment should be set aside or reversed or new trial granted,

unless it appears to the court, after an examination of the entire cause, that the error complained of has injuriously affected the substantial rights of the parties, and also provides for the submission of issues of fact to a jury, reserving questions of law for subsequent argument and decision. I hope this bill will pass the Senate and become law, for it will simplify the procedure at law.

Similar legislation to that now proposed has been adopted in Illinois, Kansas, Ohio, and Wisconsin and by constitutional amendment in California; has passed both houses of the Legislature of the State of New York, and on the 2d day of April, 1912, was before the governor of that State for his signature.

No doubt a similar rule has been applied without express statutory mandate in the courts of other States. The necessity for Federal legislation on this subject is well illustrated by a comparison of the language of the Supreme Court of the United States in the case of Railroad Company *v.* O'Reilly (158 U. S., 334) and its language in the case of Cunningham *v.* Springer (204 U. S., 647). In the former of these cases it is said:

> While an appellate court will not disturb a judgment for an immaterial error, yet it should appear beyond a doubt that the error complained of did not and could not have prejudiced the rights of the party duly objecting.

On the other hand, in the latter case, it is said:

> These three illustrations * * * illustrate the importance of a strict application of the principle that the excepting party should make it manifest that an error prejudicial to him has occurred in the trial in order to justify an appellate court in disturbing the verdict.

In other words, in the first of these cases the Supreme Court holds that an error is presumed to be prejudicial until the contrary appears, and in the second, that an error is presumed to be harmless until the contrary is made to appear. It is the purpose of the first section of the present bill to enact in so far as the appellate courts are concerned that in the consideration in an appellate court of a writ of error or an appeal judgment shall be rendered upon the merits without permitting reversals for technical defects in the procedure below, and without presuming that any error which may appear has been of necessity prejudicial to the complaining party.

The second clause of the bill is drawn so as to provide a method by which in a proper case a verdict on questions of fact may be taken on the trial, reserving questions of law for more deliberate consideration either by the trial judge or in the appellate court. It authorizes the court to direct judgment to be entered upon the verdict or upon the point reserved, if conclusive, as its judgment upon such point reserved may require. This amendment gives additional value to the trial by jury. It will prevent the delay, expense, and consequent injustice caused by new trials upon every issue when the judgment of the appellate court differs from that of the trial court upon some point of law.

To quote from the opinion of the New York Court of Appeals in a recent case:

> It frequently happens that cases appear and reappear in this court after three or four trials where the plaintiff on every trial has changed his testimony in order to meet the varying fortunes of the case upon appeal.

Extreme instances of such delay may be found in the Hillmon case (145 U. S., 285; 188 U. S., 208), where the second judgment of reversal was 23 years after the trial began; and Springer *v.* Westcott (166

N. Y., 117), where there were four appeals and the recovery was $900 for the contents of a trunk.

The common-law practice of demurrers to the evidence and judgments non obstante veredicto embody the same idea with some limitations, while the judicature act of England carries the same principle and has so justified itself in practice that in that country final judgment is rendered on appeal in 90 per cent of the cases in which the judgment below is reversed, and in only 10 per cent of the reversals is a new trial ordered.

Your committee believe that the reforms embodied in this bill are wise and consonant with the promise of Magna Charta, that justice shall be denied or delayed to no man and that the administration of justice shall not be so cumbrous, dilatory, and consequently expensive that it shall be obtainable only by the rich.

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